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DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

Henry T. Brendzel
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In re Application of: Golestani)
Application No.: 09/327,347) **DECISION ON PETITION TO**
Atty Docket No.: Golestani 3) **ACCEPT CORRESPONDENCE AS**
Filed: June 5, 1999) **TIMELY FILED UNDER 37 CFR**
For: END-TO-END INTERNET) **§1.8(b)**
CONGESTION CONTROL)
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This decision is in response to the communication filed February 26, 2003, requesting withdrawal of the notice of abandonment. The paper is being treated as a petition under 37 CFR §1.8(b) to accept correspondence as timely filed. This application was held abandoned for failure to file a response in a timely manner to the Office action mailed on June 6, 2002 (Paper No. 8). A Notice of Abandonment was mailed on March 4, 2003 (Paper No. 10).

Applicable Prosecution History

June 6, 2002	Final Rejection mailed (Paper No. 8) with incorrect fax number included in Office action (703) 308-9051
Sept 27, 2002	USPTO Auto-Reply generated for fax received at 3:24 (24 pages including cover page) and 3:33 PM (5 pages including cover page) as evidenced by copies provided by petitioner
Jan 8, 2003	Practitioner contacted regarding status of application
Feb 11, 2003	Practitioner faxed in 30 pages plus cover letter pursuant to examiner's request
Feb 26, 2003	Petition filed with copy of after final amendment

Issues

Petitioner submits a response was timely filed on September 27, 2002. In support of that statement, Mr. Brendzel submitted with this petition a copy of the faxed cover letter to the examiner which was received Feb 11, 2003; copies of the Auto-Reply for Sept 27 at two separate times for 24 pages and 5 pages; a copy of the amendment after final; a copy of the fax transmittal form for Sept 27, 2002 and a copy of a "Petition for Extension (sic) of Time" for one month which does not have a certificate of fax transmission. It is noted the Auto-Reply copies show a fax number lined through and hand

annotation of "746-7240". Mr. Brendzel also states the first fax was received at 15:39 and "the pages resent" at 15:58.

In an informal note to the examiner on or about Feb 10, 2003, Mr. Brendzel submits "(1) the 24 pages of the amendment, (2) the transmittal form, (3) the proof that the first transmission arrived at the PTO, (4) the cover sheet from the second fax transmission, (5) proof from my fax machine that the second transmission arrived at the PTO, and (6) proof from a fax sent by the PTO that the second transmission arrived. (I don't have a fax from the PTO regarding (sic) based on first transmission, but that is not unusual. The PTO response fax sometimes fails to arrive particularly when my fax is active on some other matter)."

Decision

Reviewing the papers, *en total*, it is difficult to discern what papers were filed and what the total submission was intended to be on September 27, 2002.

- The USPTO Auto-Reply shows 24 pages + 5 pages (including cover pages) or **27 total pages**.
- Applicant's cover pages reflect a hand annotated "Cover +26" for both transmissions on Sept 27, but with an additional annotation of "Transmission error skipped last three pages. These are included herein" without a signature by their author.
- Counting the pages mentioned in the informal note to the examiner shows the Mr. Brendzel believed he sent 24 pages of the amendment and a transmittal form or **25 pages** on September 27, 2002. (That same informal note to the examiner indicated no "Auto-Reply" was available for the first transmission, but there appears to be two different Auto-Reply's which accompanied the petition.)
- The copy of Applicant's Transmittal Form with the "Certificate of Facsimile" dated September 27, 2002 has "24" changed to "25" by an unknown editor.

Therefore, the record is unclear whether the applicant submitted 25, 26 or 27 pages (excluding cover pages) on September 27, 2002. Assuming the Office's Auto-Reply is the truth, the number of pages appears to be 27 pages. Assuming the complete after final amendment was received, that accounts for 24 pages. The transmittal form submitted has a "certificate of facsimile" dated September 27, 2002 that is accepted as another of the papers for a total of 25 pages. ***However, the transmittal form omits checking a box for "Extension of Time Request."*** There is no separate certificate on the Petition for Extension of Time and no fee has been paid to date. It does not appear that the amendment was accompanied by a general authorization to charge practitioner's deposit account so a further statement regarding that authorization is needed by the practitioner.

Therefore, the petition is **DISMISSED**.

Even if applicant overcomes this decision and a determination is made that the response was timely, the salient matter remains as to whether the after final amendment filed on September 27, 2002 would have placed the application in condition for allowance. Applicant is ultimately responsible for keeping the application alive. By his own admission, Mr. Brendzel did not follow-up to determine the status of the application until contacted by the examiner on January 7, 2003 (see Paper No. 9), which was seven months after the mailing date of the final rejection. An informal determination by the examiner is that the after final amendment would not have placed the application in condition for allowance so it appears the file was abandoned, a timely response notwithstanding.

If the petitioner desires further review of this decision, petitioner should file a Request for Reconsideration within two (2) months of the mailing date of this decision. Because this decision is a dismissal rather than a denial, the file is being retained in Technology Center 2100 until two months has elapsed from the mail date of this decision. Petitioner may wish to consider filing a petition to revive under 37 CFR 1.137(b). Any inquiries related to this decision should be directed to the undersigned at (703) 308-0269.



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